IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

S.T.Rev.No.154 of 2007

AGAINST ORDER DATED 26.09.2005 IN T.A.85/2005 OF THE KERALA SALES-TAX APPELLATE TRIBUNAL, ADDL. BENCH, KOTTAYAM.

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REVISION PETITIONER/APPELLANT/ASSESSEE:-

P.K.SATHYAPALAN, THADATHIL TIMBERS,
ERUMELY.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.FRANKUR D.JAYAN
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI

RESPONDENT: RESPONDDENT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY ITS SECRETARY (FINANCE),
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) SRI.V.V.ASHOKAN.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu, C.J. & K.T.Sankaran, J.

S.T.Rev.No.154 of 2007

Dated, this the 24th day of May, 2007

ORDER

H.L.Dattu,C.J.

The petitioner is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 ("K.G.S.T.Act" for short) and under the provisions of the Central Sales Tax Act. During the assessment year 1995-96, the petitioner had effected inter-State sales of timber amounting to Rs.2,35,560/-.

2. The assessee had filed his annual return before the assessing authority and in that had claimed reduced rate of tax by producing Xerox copy of the 'C' forms obtained from the purchasing dealer on a turnover of Rs.78,000/-. The assessing authority has rejected the 'C' forms so produced by the assessee and has directed the assessee to pay tax at the rate of 10% on the turnover of the inter-State sales of the timber.

3. Aggrieved by the assessment orders so passed under the provisions of the Central Sales Tax Act, the assessee had carried the matter by way of appeal before the first appellate authority. The first appellate authority has allowed the appeal and has directed the

assessing authority to accept the attested Xerox copy of the 'C' forms produced by the assessee and then complete the assessment proceedings. The Revenue, being aggrieved by the direction so issued by the first appellate authority, had carried the matter by way of second appeal before the Tribunal in Appeal Nos.156/02 and 85/05. The Tribunal has allowed the Revenue's appeal. Aggrieved by the said order, the assessee is before us in this revision petition filed under Section 41 of the K.G.S.T.Act.

4. Before we discuss the merits of the case, we intend to refer to Section 41 of the Act, which authorises a dealer to file a revision before this Court. The said provision reads as under:

> "41. **Revision by the High Court:**- (1) Any officer empowered by the Government in this behalf or any other person who objects to an order passed by Appellate Tribunal under sub-section (4) or sub-section (7) of Section 39 may, within ninety days from the date on which a copy of such order is served on him in the manner prescribed, prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law:
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> Provided that the High Court may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period.
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> (2) The petition shall be in the prescribed form and shall be verified in the prescribed manner and where it is preferred by a person other than an officer empowered by the Government under sub-section (1) it shall be accompanied by a fee of two hundred and fifty rupees.
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> (3) If the High Court, on pursuing the petition, considers that there is no sufficient ground for interfering, it may

dismiss the petitions summarily:

Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard.

(4)(a) If the High Court does not dismiss the petitions summarily, it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question of law raised, or pass such order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter under Clause (a) with its opinion on the question of law raised, the Appellate Tribunal shall amend the order passed by it in conformity with such opinion.

(5) Before passing an order under sub-section (4) the High Court may, if it considers it necessary so to do, remit the petition to the Appellate Tribunal, and direct it to return the petition with its finding on any specific question or issue.

(6) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the order against which the revision has been preferred:

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the petition, if the petitioner furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(7)(a) The High Court may, on the application of any party to a revision under this section review, any order passed by it on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made.

(b) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and, where it is

> preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of two hundred and fifty rupees.
>
> (8) If, as a result of the revision or review, any change becomes necessary in any assessment, the High Court may direct the assessing authority to amend the assessment accordingly, and on such amendment being made any amount over-paid by any person shall be refunded to him, or the further amount of tax from him shall be collected in accordance with the provisions of this Act, as the case may be.
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> (9) The cost of a revision under sub-section (1) or of a review under sub-section (7) shall be in the discretion of the High Court".

5. An analysis of the aforesaid Section is as under: An officer authorised by the Government, if he is aggrieved by an order passed by the Tribunal, may approach this Court by filing a revision petition. The same is the position in the case of others also. The officer empowered by the Government and other persons who are aggrieved by the order are also required to file revision petition within ninety days from the date on which copy of such order is served on them. The revision petition that can be filed is only on the ground that the Tribunal has decided erroneously or failed to decide any question of law.

6. In the instant case, the Tribunal has taken exception to the orders passed by the first appellate authority on the ground that in order to claim the benefit of concessional rate of tax under the provisions of C.S.T. Act, a dealer is expected to produce the 'C' form.

If for any reason the 'C' forms are not received from the purchasing dealer or it is lost, a particular procedure is prescribed under the provisions of the Central Sales Tax (Registration & Turnover) Rules, 1957. In the instant case, the assessee, in order to claim the benefit of concessional rate of tax, has produced the Xerox copy of the so-called 'C' forms issued by the purchasing dealer. The production of the certified copies of 'C' forms is not contemplated under the C.S.T.(R&T) Rules, 1957. Keeping that in view, the Tribunal, in our opinion, has rightly reversed the orders and directions issued by the first appellate authority. Since the Tribunal has not decided erroneously any question of law, the question of entertaining this revision petition would not arise. Accordingly, the revision petition requires to be rejected and it is, therefore, rejected. Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

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